

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: December 14, 1994

TO: Elizabeth Kinney, Regional Director, Region 13

FROM: Robert E. Allen, Associate General Counsel, Division of Advice

This Section 8(b)(1)(A) case is submitted for advice as to whether the Union was obligated, under *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), to inform an employee of his Beck rights, when it approached him to join the Union, at a time when the prior contract had expired and a new collective bargaining agreement had not been fully agreed upon or executed. We conclude that the Union violated Section 8(b)(1)(A) by failing to give the nonmember employee a proper and timely initial Beck notice. The Employer and the Union's conduct clearly shows that they in fact were applying and enforcing the union security clause ⁽¹⁾

of the expired collective bargaining agreement during the period after the expiration of the old contract and the execution of a new agreement. In this regard, we note that the Union business representative told a nonmember employee that he would have to fill out some Union forms to work for the Employer. When the nonmember refused the Union business agent told him that he had to fill out the forms because it was a Union shop or else get the hell out. The nonmember employee stated that the Employer told him that he had to fill out the documents that the Union gave him. The nonmember employee never received his initial Beck notice telling him that he had the right to be a Beck objector. The nonmember employee completed the forms and gave them to the Union. The Employer later received a copy of an authorization for dues deductions for the employee. Thus, both the Union and the Employer demanded that the employee become a Union member after the expiration of the contract. Under these circumstances, we conclude that the Employer and the Union agreed by conduct that the union security clause was still in effect. Therefore, since the Employer and the Union agreed by conduct to enforce and apply the union security clause, the Union was obligated to give the nonmember employee his initial Beck notice. Accordingly, a Section 8(b)(1)(A) allegation should be included in the Complaint issued on other aspects of the charge.

R.E.A.

¹ The Union security clause, Article I of the expired contract, provided:

Section 2. Union Membership Requirements

(b) All new employees of the aforesaid classifications hired after the date of the execution of this Agreement shall on or after thirty-one (31) days of employment as a condition hereof, become and remain members of the Union in good standing for the duration of this Agreement. During this probationary period they shall be eligible for all provisions of this Agreement, except seniority status.